

REMARKS

In response to the election requirement, Applicants hereby elect the species covered by Species 3: Fig. 12, claims 44-49 and 53-56, with traverse. Claims 52-56 have been newly added. No new matter has been included. Claims 8-16, 18-21, 38-40, 44-49 and 52-56 are now pending in this application.

Applicants hereby elect Species 3, claims 44-49 with traverse and newly added claims 53-56, which also read on FIG. 12. The broad claims of Species 3, e.g., claim 44, define subject matter which is also included in claims 8, 16, 18-20, 38-40 and 52-56 such that examination of the claims of Species 3 will necessarily include a search and examination of subject matter included in the Species 1 and 2 claims (i.e., claims 8-16, 18, 19-21 and 38-40). Accordingly, no undue burden would be involved in examining all such claims together.

M.P.E.P. § 803 states that “if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” M.P.E.P. § 803 should apply in this case. The search of the elected claims (species 3) will require searching in areas also pertinent to the subject matter of the non-elected species claims (i.e., species 1 and 2). Thus, all claims of the application can be examined together “without serious burden.” Applicants, therefore, respectfully request that the non-elected claims of species 1 and 2 be examined together with the elected claims.

Applicants respectfully submit that newly added claim 52 is a generic claim and is allowable over the cited prior art. Claim 52 is considered generic to all species. Claim 52 recites “[a] game apparatus operated by motions of a game player opposed to a display screen comprising: an operating means to be operated by the game player; a

position detector for detecting a trace of the operation by the game player, the trace being made by detecting a plurality of successive spatial positions of the operation by the game player and connecting said plurality of detected positions; and a control unit for controlling a game, based on the detected trace of the operation.” The teachings of Lipps (U.S. Patent No. 5,741,182) and Fenner (U.S. Patent No. 5,009,501) cannot be fairly stated as disclosing, teaching or suggesting the recited limitations of claim 52.

M.P.E.P. § 806.04(d) states that, in an application illustrating several species, “a generic claim should include no material element additional to those recited in the species claims, and . . . the claims to the species which can be included in a case in addition to a single species must contain all the limitations of the generic claim.” Claim 52 includes all limitations disclosed by the species claims and does not contain any material elements additional to those recited in the independent species claims. Therefore, claim 52 is generic to independent claims 8, 16, 18-20, 38-40, 44-49 and 53-56. Furthermore, all other non-elected claims depend from the independent claims. An independent claim is necessarily generic to their respective dependent claims. Thus, claim 52 is generic to all claims. Upon the allowance of a generic claim, Applicants should be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141.

An action on the merits of all the claims and a Notice of Allowance thereof
are respectfully requested.

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Respectfully submitted,

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